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980 Ninth Street, Suite 1500
Sacramento, CA 95814

Subject: Delta Stewardship Council's Proposed Rulemaking, Text of Proposed Regulation 11/16/2012

Dear Ms. Messer:

The Contra Costa Water District (CCWD) provides the following comments on the Delta Stewardship Council's (DSC) proposed regulations to implement the Delta Plan. As stated in the Notice of Proposed Rulemaking, the purpose of the regulations is to ensure achievement of the coequal goals established in the Delta Reform Act. CCWD appreciates the opportunity to provide comments on the proposed regulations, and does so with the intent of ensuring the regulations are necessary, within the authority of DSC, clearly written, and consistent with and non-duplicative of existing law.

Our general observation is that a number of parts of the proposed regulations contain significant amounts of discussion and explanatory text which unnecessarily lengthens the document and obfuscates the important regulatory provisions. This is particularly true in *Article 1: Definitions* where, for example, the definition of "Coequal goals" describes in great detail various methods of achieving the coequal goals and gives examples of what achieving the goals would mean. If there are regulations in this section, they are lost. If clear prescriptive requirements are necessary, they should be clearly stated in the policy section of the regulations, not in definitions. The narrative text is better suited for the Delta Plan itself or guidelines for implementing the plan.

Specific Comments

Section 5001(d) – Definition of "best available science". It is inappropriate and inconsistent with Appendix 1A to require that all of the listed attributes be present for scientific information to qualify as "best available science". These attributes may be considered desirable, but if made mandatory, could result in the exclusion of valid scientific information from decision-making processes. There is no reason to provide summary details from Appendix 1A in the text of the regulation. CCWD recommends simplifying the definition as follows:

5001(d) "Best available science" means the best scientific information and data for informing management and policy decisions. Best available science shall be consistent with the guidelines and criteria found in Appendix 1A.

Section 5001(e) – Definition of "coequal goals". This definition should be limited to the statutory definition of "coequal goals" in Water Code section 85054. As mentioned above, the long discussion of how to achieve the coequal goals and what "achievement" of the goals means is not appropriate to the definitions section and would be more useful in the Delta Plan or implementing guidelines. If there are intended regulations within the expanded definition of "coequal goals", they need to be rewritten to be more specific as to who is required to do what to achieve what specific standard. It would be difficult to enforce vague and relative standards like "better matching" and "more closely match" and "reduce their reliance". Similarly, the definitions of what it means to achieve the coequal goals are subjective and lack measurable standards. CCWD recommends limiting the definition of "coequal goals" to the statutory definition and deleting section 5001(e)(1)-(3).

Section 5001(j) – Definition of "enhancement". CCWD suggests striking the specific reference to the Yolo Bypass project; general examples to help understand the meaning of the term are sufficient.

Section 5001(s) – Definition of "significant impact". CCWD suggests that the CEQA definition of significant impact be used for consistency and clarity. A "significant impact" has the connotation of adverse or negative effects, and is used that way under CEQA. The beneficial impacts of a project would be described as just that, beneficial impacts. Use of separate terms for adverse and beneficial impacts will add clarity to the regulations.

Section 5003 – Covered Action Defined. This definition includes regulatory or process information (5003(D)(c) and (d) that should be moved out of the definition section. Additionally, the DSC should review the limitation on the exemption for temporary water transfers for consistency with the Water Code and the authority of other state agencies to regulate transfers.

Section 5004 – Contents of Certifications of Consistency. This section is confusing and begs a number of questions. By definition, a covered action has a significant impact (positive, negative or a blend) on the coequal goals. Unless that impact is beneficial, it is not clear how a finding of consistency with the coequal goals can be made as required under Section 5004(b)(1). Additionally, mitigation is required for all projects not exempt from CEQA. But if considered consistent with the coequal goals, or if the project has a beneficial impact on achieving the coequal goals, why would mitigation be necessary? Is it sufficient to provide the mitigation needed under CEQA to meet this requirement? For purposes of rulemaking, it may be prudent to succinctly

list the findings needed for consistency and provide more detailed descriptions of specifics in a handbook or instructions on completing the certification form.

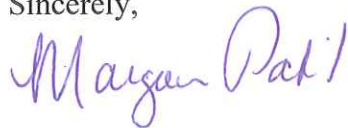
Section 5005 – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance. Again, this section contains information that is not necessary to the regulations and does not add to the reader's understanding of the regulations. For example, paragraphs (a) and (b) discuss policies of the state, and discuss laws implemented through other regulations and by other agencies. These should be deleted. Under section 5005(e)(1), it should be clear that these new regulations do not change the existing regulations related to Urban or Agricultural Water Management Plans administered by DWR. It should be sufficient to provide evidence that the DWR requirements have been met.

Section 5006 -- Improved Transparency in Water Contracting. The purpose of this section is not clear. The statement of reasons indicates that the "lack of accurate, timely, consistent, and transparent information on the management of California's water supplies and beneficial uses is a significant impediment to the achievement of the coequal goals." It is not clear how a new regulation requiring that DWR and Reclamation follow their existing policies for a transparent contracting process will improve transparency. There is no evidence that the existing policies are not being followed. Additionally, it is not clear that DSC has any authority to compel enforcement of the regulations and policies if they were not being implemented. This section is not necessary and should be deleted.

Section 5007 – Update Delta Flow Objectives – This section is not regulatory in nature, discusses existing regulations that are within another agency's jurisdiction and sets a timeline for the work of an agency over which DSC does not have control. Flow criteria is a critical element in the Delta Plan, but is not relevant to the rulemaking process and should be deleted here.

We appreciate the opportunity to provide comments on the DSC's proposed rulemaking. Providing the regulatory foundation for implementing the Delta Plan is an important milestone in realizing the coequal goals of improving water supply reliability and protecting, restoring and enhancing the Delta ecosystem. We look forward to continuing to work with you to develop an effective regulatory package.

Sincerely,



Marguerite Patil
Special Projects Manager

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